

**MOUNTAIN VIEW ORCHARDS, BLOCK 12, LOT B, AP (ZECH)  
FIVE-LOT MINOR SUBDIVISION WITH ONE VARIANCE REQUEST**

**STAFF REPORT FOR PLANNING BOARD**

**CASE PLANNER:**

Benjamin H. Howell *BH*

**REVIEWED AND  
APPROVED BY:**

Renee Van Hoven *kept for RVH*

**PUBLIC HEARINGS,  
MEETINGS AND  
DEADLINES:**

Planning Board public hearing:	February 1, 2006
Deadline for PB recommendation to BCC:	March 1, 2006
BCC public meeting (tentative):	9:00am February 28, 2006
Deadline for BCC action (35 working days):	March 23, 2006

**APPLICANT / OWNER:**

Steven Zech  
70 Angel Lane  
Hamilton, MT 59840

**REPRESENTATIVE:**

Leonard Shepherd with Shepherd Survey, 363-1086

**LOCATION OF REQUEST:** The property is located approximately five miles northeast of Corvallis off Sutherland Lane. (Map1)



**Map 1: Location Map**  
(Source Data: Ravalli County Planning Department)

**LEGAL DESCRIPTION  
OF PROPERTY:**

Lot B of Amended Plat # 542883 of Block 12, Mountain View Orchards Subdivision, located in the E ½, Section 15, T7N, R20W, P.M.M., Ravalli County, Montana.

**APPLICATION  
INFORMATION:**

The subdivision and variance applications were determined complete on January 17, 2006. Agencies were notified of the subdivision and variance request and comments received from agencies not included in the application packet are *Exhibits A-1 through A-6* of the staff report.

**LEGAL NOTIFICATION:**

A legal advertisement was published in the Ravalli Republic on January, 17, 2006. Notice of the project was posted on the property, and adjacent property owners were notified of the subdivision and variance request by certified mail postmarked January 17, 2006. The public comment letter is included as Exhibit B-1.

**DEVELOPMENT  
PATTERN:**

Subject property	Large lot residential and agriculture
North	Large lot residential
South	Large lot residential and agriculture
East	Large lot residential and agriculture
West	Large lot residential

## RAVALLI COUNTY PLANNING BOARD

FEBRUARY 1, 2006

### MOUNTAIN VIEW ORCHARDS, BLOCK 12, LOT B, AP (ZECH) FIVE-LOT MINOR SUBDIVISION WITH ONE VARIANCE REQUEST

#### RECOMMENDED MOTIONS

1. That the variance request from Section 5-4-5(b)(2) of the Ravalli County Subdivision Regulations, to allow Coyote Creek Drive to be improved to meet two-lot local road standards with the exception of a 30-foot wide public access and utility easement, **be denied**, based on the findings of fact and conclusions of law in the staff report.
2. That the Mountain View Orchards, Block 12, Lot B, AP (Zech) minor subdivision **be approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

#### RECOMMENDED MITIGATING CONDITIONS OF APPROVAL

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

**Notification of Proximity to Agricultural Operations.** This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (*Effects on Agriculture*)

**Notification of Irrigation Easements.** Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water right holders have the right to maintain and repair their irrigation facilities/diversion structures whenever necessary to keep them in good condition. The Bitterroot Irrigation District and Mountain View Water Users Association must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act which damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders and those acting with the approval of the Bitterroot Irrigation District and Mountain View Water Users Association have the right to use the easements to maintain the ditches. Please contact the Bitterroot Irrigation District, 1182 Lazy J Lane, Corvallis, Montana, 59828, 961-1182, and the Mountain View Water Users Association, 477 Bailey Lane, Corvallis, Montana, 59828, 961-4343 for more information. (*Effects on Agricultural Water User Facilities*)

**Notification of Road and Common Access Maintenance.** Ravalli County, the State of Montana, or any other governmental entity does not maintain the Common Accesses for Lot B1 and Lot A of AP 542833 and Lots B2 and B3 or Coyote Creek Drive, the internal subdivision road providing access to Lots B4 and B5 of this subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. Road Maintenance Agreements were filed with this subdivision and outline what parties are responsible for road maintenance and under what conditions. (*Effects on Local Services and Effects on Public Health & Safety*)

**Limitation of Access onto a State Road.** A "no ingress/egress" restriction is located along the Sutherland Lane frontage of the subdivision, which precludes vehicular access onto this

County-maintained road, excepting the approved approaches for the two common accesses and Coyote Creek Drive. This limitation of access may be lifted or amended with approval of the County. (*Effects on Local Services & Effects on Public Health and Safety*)

2. Protective covenants to be filed with the final plat shall include the following provisions:

***Living with Wildlife.*** (See Exhibit A-1 for required provisions.) (*Effects on Agriculture & Effects on Wildlife and Wildlife Habitat*)

***Waiver of Protest to Creation of RSID/SID.*** Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to creating and/or improving a community water or wastewater treatment system and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (*Effects on Local Services*)

***Access Requirements for Lots within this Subdivision.*** The Corvallis Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6", maximum grade of 6%, and an all weather surface that can accommodate the weight of a fire truck to meet requirements of the Uniform Fire Code. Please contact the Corvallis Rural Fire District at PO Box 13, Corvallis, MT, for further information on the requirements of the Corvallis Rural Fire District and/or the Uniform Fire Code. (*Effects on Local Services & Effects on Public Health and Safety*)

***Required Posting of County-Issued Addresses for Lots within this Subdivision.*** The Corvallis Rural Fire District has adopted the Uniform Fire Code which requires the lot owners to post the County-issued addresses at the intersection of the driveways leading to both of the residences and Wagon Wheel Way as soon as construction on the residences begins. (*Effects on Local Services & Effects on Public Health and Safety*)

***Primary Heat Source.*** The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. (*Effects on Natural Environment*)

***Control of Noxious Weeds.*** Lot owners shall control the growth of noxious weeds on their respective lot(s). (*Effects on Natural Environment*)

***Lighting for New Construction.*** Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. (*Effects on Public Health & Safety*)

***Radon Exposure.*** The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. (*Effects on Public Health and Safety*)

**Amendment.** The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval.

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with the subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*
4. The applicant shall provide evidence that a financial contribution (to be decided by the Planning Board) has been contributed to the Corvallis School District prior to final plat approval. *(Effects on Local Services)*
5. The applicant shall provide a letter from the Corvallis Rural Fire District stating that they have provided the required 1,000 gallons per minute water supply or 2,500 gallons per minute water storage for fire protection for each lot within this subdivision. Alternatively, the applicant may provide evidence that a \$500 per lot contribution has been made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services - Fire Protection & Effects on Public Health and Safety)*
6. The applicant shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision, in accordance with E-911 addressing policy. *(Effects on Local Services & Effects on Public Health and Safety)*
7. The applicant shall install a stop sign at the intersection of Coyote Creek Drive and Sutherland Lane, subject to the review and approval of the Planning Department in consultation with the Road Department. *(Effects on Local Services & Effects on Public Health & Safety)*
8. Coyote Creek Drive shall be labeled as a privately-maintained road within a public road and utility easement on the final plat. *(Effects on Local Services)*
9. The applicant shall provide for an additional five feet of easement along the Sutherland Lane frontage of the subdivision on the final plat. *(Effects on Local Services)*
10. The final plat shall show a no ingress/egress zone along the Sutherland Lane frontage of the subdivision, excepting the approaches for the two common accesses and Coyote Creek Drive approved by the County Road Department. *(Effects on Local Services & Effects on Public Health & Safety)*.
11. The developer shall pave all approaches a minimum of 20 feet wide from the surface of Baldwin Road back to the edge of the right-of-way/easement boundary or a distance of 20 feet, whichever is greater, or as required by the MDT, if specified in the approach permit.

## **INTRODUCTION**

The Mountain View Orchards Block 12, Lot B, AP Minor Subdivision is a five-lot subdivision of 13.41 acres located northeast of Corvallis. The property is relatively flat and the majority of it is currently pasture or vegetated with native grasses and noxious weeds. The property has water

rights through the Bitterroot Irrigation District and the Mountain View Water Users Association, and these rights are proposed to be divided between the five lots.

The applicant is requesting a variance from Section 5-4-5(b)(2) of the Ravalli County Subdivision Regulations, to allow Coyote Creek Drive, a proposed privately-maintained road that would access Lots B4 and B5 of the subdivision, to be built to two-lot local road standards, with the exception of a 30-foot wide public access and utility easement.

*Staff recommends denial of the variance request and conditional approval of the subdivision proposal.*

## **SUBDIVISION REPORT**

### **COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA**

#### **CRITERION 1: EFFECTS ON AGRICULTURE**

##### **Findings of Fact:**

1. The proposed minor subdivision on 13.41 acres will result in five lots that range in size from 2.57 to 2.97 acres. The property is located approximately five miles from Corvallis.
2. The property is located in an area where there is a mix of agricultural and residential uses. To mitigate impacts on nearby agricultural practices, a notification of agricultural operations shall be filed with the final plat and the covenants shall include a provision requiring owners to control domestic pets. (Conditions 1 & 2 – in Living with Wildlife section)
3. There are no Prime Farmland Soils or Farmland of Statewide Importance associated with this property.

##### **Conclusion of Law:**

With the mitigating conditions, impacts on agriculture will be minimized.

#### **CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES**

##### **Findings of Fact:**

1. According to the application, the property has water rights which are distributed by the Bitterroot Irrigation District and the Mountain View Water Users Association. The approximately ten acres currently under irrigation are proposed to be divided among the lots.
2. In recent discussions with DNRC-Water Resources and the Bitterroot Irrigation District, it was confirmed that the irrigation water rights are held by Bitterroot Irrigation District, not by the property. Consequently, a master irrigation plan is not required for this subdivision and installation of irrigation facilities in accordance with Section 5-6-3 is also not required.
3. As a requirement of final plat approval, Section 3-3-4(c)(25) of the Ravalli County Subdivision Regulations requires the approval of the irrigation district when irrigation ditches/pipelines are to be altered.
4. The preliminary plat shows a proposed 10-foot wide irrigation easement along the southern property boundary. An existing irrigation mainline pipe is located within this easement. The preliminary plat also shows a proposed 10-foot wide irrigation easement traversing through Lots B3 and B2, diverging from the mainline on the southern property boundary.
5. As a requirement of final plat approval, the Ravalli County Subdivision Regulations require that existing irrigation easements/rights-of-way located on the property be shown on the final plat. In order to mitigate impacts on agricultural water user facilities, a notification of these easements shall be included in the Notifications document. (Condition 1)

##### **Conclusion of Law:**

With the mitigating conditions and the requirements of final plat approval, impacts to agricultural water user facilities will be minimized.

#### **CRITERION 3: EFFECTS ON LOCAL SERVICES**

##### **Findings of Fact:**

1. The pro rata share for substandard County-maintained road(s) that provide access to this subdivision from Eastside Highway shall be paid by the applicant prior to final plat approval, as required by the Subdivision Regulations.
2. The preliminary plat shows a non-ingress/egress strip located along the Sutherland Lane frontage of the subdivision, excepting the approved approach locations for the two common accesses and Canyon Creek Drive. To mitigate impacts of the subdivision on the public road

system, staff recommends this restriction be shown on the final plat and a notification of this access restriction shall be included in the Notifications document filed with the final plat. (Conditions 1 & 10)

3. Sutherland Lane is a County-maintained road that provides access to the subdivision. The easement for Sutherland Lane along the subdivision frontage is 50-feet wide. To mitigate impacts on local services, the applicant shall provide for an additional 5 feet of easement along the Eastside Highway frontage. (Condition 9)
4. Lots B1, B2 and B3 will be served by two common accesses off Sutherland Lane, and Lots B4 and B5 will be served by the proposed internal subdivision road, Coyote Creek Drive. The applicant will be required to get approved approach permits for the common accesses and Coyote Creek Drive from the County Road and Bridge Department.
5. Coyote Creek Drive is a privately-maintained road that will serve Lots B4 and B5 within this subdivision. The applicant has requested a variance from the requirement to construct Coyote Creek Drive to meet County road standards for a minor local road in the Subdivision Regulations and have instead proposed to build the road to two-lot local standards with the exception of an 18-foot wide gravel travel surface and an easement width of 30 feet. Staff has recommended denial of the variance request. (Variance)
6. Road maintenance agreements for the common accesses and Coyote Creek Drive have been included in the application packet and are required to be filed with the final plat. To mitigate impacts on local services and public health and safety, a notification of the road maintenance agreements shall be included in the Notifications document filed with the final plat. (Condition 1)
7. With denial of the variance request, Coyote Creek Drive is required to be constructed to meet County standards and a grading and drainage plan must be submitted to reflect the improvements. Submittal of the General Discharge Permit for Stormwater Associated with Construction Activity from DEQ, reconstruction of the road and storm water drainage facilities in accordance with an approved road and grading and drainage plan, and submittal of a road certification are required prior to final plat approval.
8. Section 3-3-4(c) (19) of the Ravalli County Subdivision Regulations requires that an approved road name petition be submitted with the final plat application for Coyote Creek Drive. Section 5-4-11 of the Ravalli County Subdivision Regulations requires that road name signs shall be installed at the intersection of Sutherland Lane and Coyote Creek Drive, which is also a requirement of final plat approval.
9. In order to ensure that the public has access onto the road within this subdivision, Coyote Creek Drive shall be dedicated as a public road and utility easement on the final plat. (Condition 8)
10. The Road Department generally requires a stop sign on roads that serve more than one lot. To mitigate impacts on local services, the applicant shall install a stop sign at the intersection of Sutherland Lane and Coyote Creek Drive prior to final plat approval. (Condition 7)
11. Individual water and wastewater treatment systems are proposed to serve the lots. To mitigate potential impacts of this subdivision on any possible future public water, public sewer system, or the road system, the RSID/SID waiver filed with the final plat shall address these systems. (Conditions 2 & 3)
12. Bitterroot Disposal provides disposal service to this area.
13. The applicant is proposing a contribution of \$100 per lot to the Corvallis School District. The Superintendent provided a letter dated January 12, 2006 which states there are no specific objections to this subdivision. To mitigate impacts of the proposal on the School District, the applicant shall contribute an amount per lot (to be determined by the Planning Board) to the Corvallis School District prior to final plat approval. (*Exhibit A-2* & Condition 4)
14. The subdivision is located within the Corvallis Rural Fire District. The Corvallis Rural Fire District has provided general comments on subdivision proposals, indicating they have adopted a policy which addresses access, posting of addresses, and water supply requirements. Conditions of



approval will meet the recommendations of the Corvallis Rural Fire District. (*Exhibit A-3 & Conditions 2 & 5*)

15. The Ravalli County Sheriff's Office provides law enforcement services to this area.

16. Public Services are adequate for this subdivision.

Conclusion of Law:

With the mitigating conditions and requirements of approval and denial of the variance request, impacts on local services will be minimized.

**CRITERION 4: EFFECTS ON THE NATURAL ENVIRONMENT**

Findings of Fact:

1. Individual wells and wastewater treatment systems are proposed to serve lots within the subdivision and adequate information has been provided to the Environmental Health Department for local subdivision review to occur. A Certificate of Subdivision Plat Approval from Montana DEQ has been provided and is required to be submitted with the final plat. (Application)
2. To mitigate air pollution resulting from home heating emissions, the protective covenants filed with the final plat shall state that the primary heat source for any newly constructed residences must be at least 75% efficient. (Condition 2)
3. The applicant has requested a variance from the County road standards to allow Coyote Creek Drive to be constructed to two-lot local road standards, with a gravel travel surface. Dust generated from gravel roads has a negative impact on air quality. Staff has recommended denial of the request, which will result in the paving of the road. (Variance)
4. A noxious weed and vegetation control plan is required to be filed with the final plat for ground disturbance associated with a subdivision. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district, shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, *such as* road construction, the plan shall be submitted to the weed board for approval from the board.
5. To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)

Conclusion of Law:

With the mitigating conditions and the requirements of final plat approval, impacts from this subdivision on the natural environment will be minimized.

**CRITERION 5: EFFECTS ON WILDLIFE AND WILDLIFE HABITAT**

Findings of Fact:

1. The property is not located within the FWP-identified big game winter range and no species of special concern have been identified in the vicinity of the subdivision.
2. The FWP comment letter recommends including Living with Wildlife provisions in the covenants for this subdivision. (*Exhibit A-1 & Condition 2*)

Conclusion of Law:

With the condition of approval, impacts of the proposed subdivision on wildlife will be mitigated.

**CRITERION 6: EFFECTS ON PUBLIC HEALTH AND SAFETY**

Findings of Fact:

1. The proposed subdivision is located within the Corvallis Rural Fire District and with Conditions 2 & 5, impacts to the District will have been addressed.

2. Lots will be served by individual wells and wastewater treatment systems. (Natural Environment)
3. To mitigate the general impacts of this subdivision on public health and safety, the subdivider shall apply for County-issued addresses for each lot within this subdivision. A provision shall be included in the protective covenants requiring property owners to post County-issued addresses at their driveways to enhance provision of emergency services. (Conditions 2 & 6)
4. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision requiring full cut-off lighting with the exception of flag poles. (Condition 2)
5. There is a prevalence of radon in the County and to mitigate impacts on public health and safety, the covenants for this property shall include a statement regarding radon exposure. (Condition 2)
6. According to the subdivision application, there are no other known hazards that are on or adjacent to the property that may significantly affect public health and safety.
7. Public Services are adequate for this subdivision.

**Conclusion of Law:**

The mitigating conditions and requirements of final plat approval address impacts of this subdivision on public health and safety.

**COMPLIANCE WITH:**

**1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.**

**Finding of Fact:**

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

**Conclusion of Law:**

This proposal meets the survey requirements or conditions have been required to bring the proposal into compliance.

**2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.**

**Finding of Fact:**

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

**Conclusion of Law:**

The developer has submitted a plan which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plan into compliance.

**3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS**

**Findings of Fact:**

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is

within two miles of its limits, a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

**CONSISTENCY WITH EXISTING ZONING AND COVENANTS**

Findings of Fact:

1. The property is not located within a Zoning District.
2. There are existing covenants on the property, included in the application packet. The proposal appears to be consistent with the covenants.

Conclusion of Law:

There is no zoning on this property and the proposal appears to comply with existing covenants.

**PROVISION OF EASEMENTS FOR UTILITIES**

Finding of Fact:

The plat indicates utility easements are located along Sutherland Lane and the proposed internal subdivision road, Coyote Creek Drive.

Conclusion of Law:

Utility services will be available to this subdivision.

**PROVISION OF LEGAL AND PHYSICAL ACCESS**

Finding of Fact:

Physical and legal access for this subdivision is proposed via Bailey Lane/Popham Lane, Sutherland Lane and the internal subdivision road, Coyote Creek Drive. A variance has been requested for Coyote Creek Drive. (Local Services & Variance)

Conclusion of Law:

With the conditions of approval, action on the variance from road standards, and the requirements of final plat approval, the proposal meets physical and legal access requirements.

## **VARIANCE REPORT**

### **VARIANCE REQUEST**

The applicant has requested a variance from Section 5-4-5(b)(2) and Table 5-4-2 of the Ravalli County Subdivision Regulations to allow the proposed internal subdivision road accessing Lots B4 and B5, Coyote Creek Drive, to be built to two-lot local road standards, with the exception of a 30-foot wide public access and utility easement.

### **Compliance with Review Criteria**

#### **A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.**

##### **Findings of Fact:**

1. Section 5-4-5(b)(2) and Table 5-4-2 of the Ravalli County Subdivision Regulations requires Coyote Creek Drive to meet standards for a minor local road due to the number of lots served, including an asphalt-concrete paved surface width of 20 feet within a 60-foot wide public access and utility easement.
2. The applicant is requesting a variance and is proposing to build Coyote Creek Drive to meet two lot local road standards, which is a 12-foot gravel road. The applicant is also proposing a 30-foot wide easement.
3. The Corvallis Rural Fire District's general comments indicate that fire apparatus access roads should have a minimum 20-foot wide travel surface width. (*Exhibit A-3*)
4. The Board of Health generally commented on road standards by stating: "In a discussion of air quality and roads, the Board of Health unanimously agreed that air quality and road safety are of paramount importance in the development of any road standards." A subsequent letter from members of the Board of Health addresses concerns associated with the impacts of road dust on public health. (*Exhibits A-4 & A-5*)
5. David Ohnstad provided an e-mail comment dated January 25, 2006 which states that the Road and Bridge Department does not support the variance from the roadway improvement requirements of the Subdivision Regulations. (*Exhibit A-6*)

##### **Conclusion of Law:**

The variance request is opposed by the County Road and Bridge Department, the Board of Health, and the Ravalli County Planning Department. The substandard road will generate road dust, limit access for emergency services, and decrease public safety; therefore, there will be impacts on public health and safety from granting this variance and it could be injurious to adjoining property owners and the general public.

#### **B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.**

##### **Finding of Fact:**

The property is level and there is adequate space for a County Standard Road.

##### **Conclusion of Law:**

The conditions upon which the variance is proposed are not unique to the property.

**C. Physical conditions, such as topography or parcel shape, prevents the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).**

Finding of Fact:

The property is level and the shape does not limit the applicant from meeting the road standards.

Conclusion of Law:

No physical or topographic limitations would restrict the applicant from meeting the road standards.

**D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.**

Findings of Fact:

1. The property is not within a Zoning District.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

**Countywide Goal 3:** Protect air quality

**Countywide Policy 3.2:** Minimize dust and other air pollution by appropriate subdivision regulation.

- The subdivision regulations require paving of Coyote Creek Drive.
- The Ravalli County Board of Health has expressed concerns regarding air pollution caused by dust. (See Variance Criterion A and *Exhibits A-4 & A-5*)

**Countywide Goal 4:** Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

**Countywide Policy 4.1:** Encourage development that will minimize or avoid additional costs to existing taxpayers.

- Lots B4 and B5 within this subdivision are proposed to be accessed from Coyote Creek Drive, a privately-maintained road that will be substandard, if the variance is granted.
- The Road Department does not support granting of variances from roadway improvement standards.

**Countywide Policy 4.5:** Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- The applicant has requested a variance from the requirement that the road be constructed to meet the road design standards in the Ravalli County Subdivision Regulations.

Conclusions of Law:

1. The property is not located within a Zoning District.
2. The Growth Policy does not support granting the variance request.

**E. The variance will not cause a substantial increase in public costs.**

Findings of Fact:

1. Coyote Creek Drive is proposed to be a privately-maintained, substandard road.
2. The Road Department and Fire District do not support granting the variance request.

Conclusion of Law:

There may be an increase to public costs, in particular for providing emergency services, by granting this variance.



**Montana  
Wildlife & Parks**

**EXHIBIT A-1**

**RECEIVED**

**JUN 28 2005**

Ravalli County Planning Dept.

*PC-05-06-1246*

Region 2 Office

3201 Spurgin Road

Missoula, MT 59804-3101

Phone 406-542-5500

June 20, 2005

Leonard Shepherd  
Shepherd Survey  
320 Adirondac Ave.  
Hamilton, MT 59840

Dear Mr. Shepherd:

Normally when Montana Fish, Wildlife & Parks reviews subdivisions, we customize our letter and the proposed covenants to the specific location and circumstances of the subdivision. However, we are endeavoring to catch up with a backlog of subdivisions in Ravalli County that we are currently reviewing. Towards that end and based on our review of the location of each of these subdivisions and the preliminary plats, we would like to propose one set of development covenants.

We recommend the enclosed development covenants for each of the following subdivisions represented by you, in order to help homeowners deal with and avoid potential wildlife issues:

1. Hamilton Heights, Lot 7B (Block 3); owner Grenell (minor 2 lots on 13.9 acres); Cow Creek and Hamilton area.

2. Mountain View Orchards, Lot B (Block 12); owner Zech (minor 5 lots on 13.4 acres); Coyote Creek and Coryallis area.

We thank you for providing the opportunity for MFWP to comment on this subdivision. (Please contact Sharon Rose at 542-5540 or [shrose@mt.gov](mailto:shrose@mt.gov) if you wish to receive an electronic version of these comments or covenants.)

Sincerely,

Mack Long  
Regional Supervisor

ML/sr

C: Ravalli County Planning Department, Attn: Karen Hughes, 215 S. 4 St., Ste. F, Hamilton, MT 59840

*Proposed Development Covenant for:*

1. Hamilton Heights, Lot 7B (Block 3); owner Grenell (minor 2 lots on 13.9 acres); Cow Creek and Hamilton area.
2. Mountain View Orchards, Lot B (Block 12); owner Zech (minor 5-lots on 13.4 acres); Coyote Creek and Corvallis area.

*Recommended by Montana Fish, Wildlife & Park; Missoula; June 15, 2005*

**Section \_\_: Living with Wildlife**

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, black bear, mountain lion, fox, skunk, and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see the Education portion of FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov).

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because ripe or rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c. **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, and other wildlife. It is best not to set garbage cans out until the morning of garbage pickup.
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide



**Corvallis School District #**

P. O. Box 700 / 1045 Main  
Corvallis MT 59828

Phone: (406) 961-4211 Fax: (406) 961-5144

**EXHIBIT A-2**

DEC 17 2000  
JAN  
Ravalli County Planning Dept.  
12-00-01-72

**Daniel B. Sybrant**  
Superintendent  
961-4211

**Sarah Schumacher**  
Principal,  
High School  
961-3201

**Trevor Laboski**  
Asst. Principal  
High School  
961-3201

**Tom A. Miller**  
Principal,  
Middle School  
961-3007

**Janice Stranahan**  
Principal,  
Primary School  
961-3261

**Virginia Haines**  
Special Services Dir.  
961-3201

**Russ Hendrickson**  
Technology Coor.  
961-3201

**Vannesa Bangfrede**  
District Clerk  
961-4211

January 12, 2006

Ravalli County Planning Dept.  
215 South 4<sup>th</sup> Street, Suite F  
Hamilton MT 59840

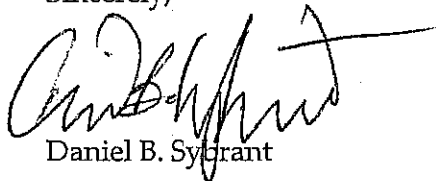
Dear Planning Board,

I have reviewed your letter regarding the Mountain View Orchards, Block 12, Lot B, AP and One Variance Request.

We have no specific objection to this subdivision. As we have stated before, growth in student numbers continues to affect our district infrastructure and bussing system.

In general, we ask that appropriate student safety measures be considered when approving this request.

Sincerely,



Daniel B. Sybrant

dbb/lh

# EXHIBIT A-3

11/16/07 10:00 AM  
LC 04-03 361

## CORVALLIS RURAL FIRE DISTRICT IMPACT FEES

The Corvallis Rural Fire District has established the following requirements for new purposed subdivisions within its district. The requirements were established with consideration for life, safety of the residents of the district, as well as the Volunteers who are called upon to protect the district, and to mitigate harm to the public health and environment.

When establishing the requirements, emphasis was given to the Uniform Fire Code, Articles 9 and 10, and Appendix III-A, the Ravalli County Subdivision Regulations, the Ravalli County Road Department standards, and the 1993 Fire Protection Guidelines for Wildland Residential Interface Development. These Publications and Articles establish rules for dealing with fire apparatus access roads, fire department access to buildings, water supplies for fire protection, installation and maintenance of fire protection systems, and clearance of brush and vegetative growth from roadways.

Consideration was also given to Section 23.7.105 Administrative Rules of Montana, which is adopted pursuant to authority of 50-3-102 (2) and 50-3-103, MCA, which incorporates by reference the UFC (Uniform Fire Code) and establishes a minimum fire prevention code for Montana.

Every effort has been made to use words and phrases consistent with their definitions in the above mentioned publications.

Development Name: A.P. Lot 1, Blk 9, Sunnyside Orchards #3 (3rd Submittal)  
Number of Lots: 3  
Developer(s) Name: ?

The Fire Department requires that all roads and bridges meet or exceed, and are maintained to, the requirements of the Uniform Fire Code (UFC) Section 902, which reads in part:

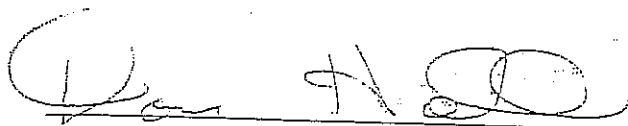
902.2.1 Required Access: Fire apparatus shall be provided in accordance with Sections 901 and 902.2 for every facility, building, or portion of a building hereafter constructed or moved into or within the jurisdiction when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than 150 feet (45,720 mm) from fire apparatus access, as measured by an approved route around the exterior of the building or facility...

The Corvallis Rural Fire District currently has an ISO Class 5 Residential rating which requires a water flow of 200 gallons per minute for a duration of 20 minutes, or a total flow of 4000 gallons per residence.

Considering the above information, the Fire District will accept a water supply of 1000 gallons per minute or 2500 gallons per lot of stored water. The water supply installation, upkeep and maintenance will be the responsibility of the Subdivision.

The Fire District realizes the financial burden of installing and maintaining a water supply and/or storage tanks capable of providing the required water flows, and is willing to accept a payment of \$500.00 (Five Hundred Dollars) per lot, in lieu of the water supply required by the UFC. The payment per lot must be paid upon approval of the Subdivision. The Fire District will then, upon its elective, purchase fire fighting apparatus or develop water supplies.

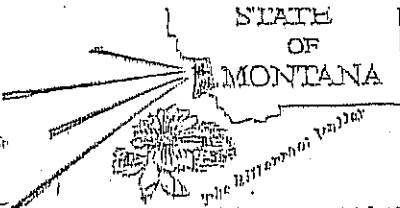
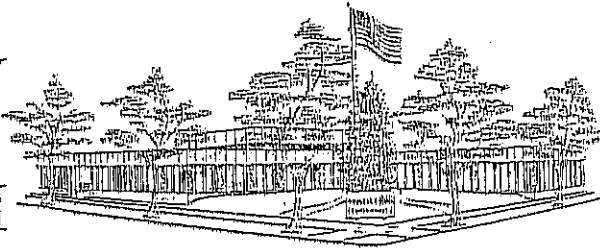
**EXCEPTIONS:** When buildings are completely protected with an automatic sprinkler system approved by the Chief, the above listed water supply may be reduced by 50%. The Subdivision Covenants must state that "All residences constructed within the Subdivision be completely protected with an approved automatic sprinkler system." The Fire District will provide a \$250.00 reimbursement to those residences with an approved automatic sprinkler system.



Chairperson

Date

COUNTY  
OF  
RAVALLI



Hamilton, Montana 59840

JL-04-06-776

Ravalli Co. Planning Office

RAVALLI COUNTY BOARD OF HEALTH  
215 S. 4<sup>th</sup> Street, Suite A  
Hamilton, MT. 59840

RECEIVED  
JUN 2 2004

June 23, 2004

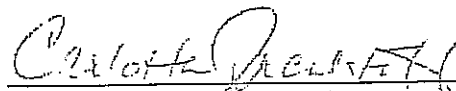
Road Standards Committee  
C/O Ravalli County Planning Department

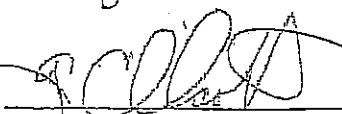
RE: Board of Health's Concerns for Road Standards

The Board of Health met in regular session on this date of June 23, 2004. In a discussion of air quality and roads, the Board of Health unanimously agreed that air quality and road safety are of paramount concern in the development of any road standards.

For the Board of Health:

  
Roger DeHaan, Member

  
Carlotta Grandstaff, Member

  
Commissioner Greg Chilcott, Chairman

## EXHIBIT A-5

Memo to: Ravalli County Commissioners  
From: Ravalli County Health Board  
Re: Proposed new County road regulations  
Date: April 4, 2005

Various research studies show a strong link between air borne dust particulates and human health problems, including emphysema, asthma and others. For further details, please see the article (and 72 referenced articles) from the American Academy of Pediatrics, 2004, "Ambient Air Pollution: Health Hazards to Children."

In Ravalli County, even though there is limited air monitoring we are able to do, it is clear that sometimes we have excessive particulate matter (mainly road dust) in our air. Additionally, citizens often complain to County and State agencies about specific road dust problems in certain areas.

Because of this, the Health Board strongly urges the Commissioners to include mandatory dust control measures in any road regulations for the County.

All new roads, including those in subdivisions, should be paved, or treated with dust suppressant such as magnesium chloride, at the time of construction. If the magnesium chloride option is chosen, which requires reapplication every other year, owners must provide sufficient bonding or financial guarantee to insure that the work will be done for an extended period such as 20 or 30 years.

For existing roads owned by the County, we recommend that the very first budget priority be to apply dust palliative on all roads. This means that ALL County roads should have a graded magnesium chloride surface before any road is given additional budget allocation for widening, paving etc.

We believe that these measures, if implemented, will significantly help the health condition of all citizens of Ravalli County.

Thank you for considering and including these provisions in the new road regulations.

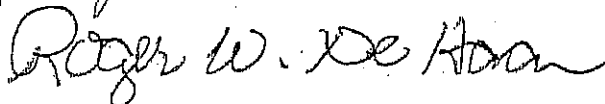
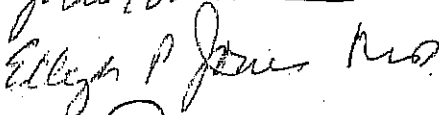
Respectfully submitted by the Ravalli County Health Board:

Mr. Greg Chilcott, Ravalli County Commissioner

Dr. John Swanson, M.D.

Dr. Ellyn Jones, M.D.

Mr. Roger W. De Haan, P.E.



# EXHIBIT A-6

**Ben Howell**

---

**From:** David Ohnstad  
**Sent:** Wednesday, January 25, 2006 2:09 PM  
**To:** Ben Howell  
**Subject:** mountain view orchards

Ben -

Regarding the Request for Agency Comment on Mountain View Orchards Block 12, Lot B, AP (01/10/06); Variance Request - the Road & Bridge Department **does not support** variance from the road improvement requirements of the subdivision regulations.

David

*David H. Ohnstad  
County Road Supervisor  
Ravalli County, Montana  
(406) 363 - 2733*

# EXHIBIT B-1

RECEIVED

JAN 26 2006

1C-06-01-135  
Ravalli County Planning Dept.

I'm writing this letter in response to the letter I received from the County regarding plat # 542883, proposed subdivision.

I know there is a lot of money to be made in real estate, but the County needs a game plan. Ten to fifteen years ago the drive to Missoula from Hamilton was a pretty scenic drive. Now this drive is a "Hodge Podge" of businesses, and gravel pits.

This property in question has been bought by a realtor to make money, not to live in this area and to be a part of this community. This area is farmland fed by the "Big Ditch" water supply; a limited water source. My property is a good example of this limited water source and affects of subdivisions in this area. My back parcel grows weeds that the State of Montana and myself are trying to eradicate. My property was subdivided and the seller kept the "Big Ditch" water

rights. I'm limited to irrigating my land with the water from Coyote Gulch and have had to install pumps to irrigate the back parcels, so I can grow something other than the weeds. The land is very dry and the 'Big Ditch' water source is vital for agriculture

The County needs a game plan for developing. It needs to look beyond the money and at the affects of subdivisions on the natural resources, the scenic views, and the overall economic impact long term. It was my understanding that this neighborhood was to have 10 acre minimums per subdivision and trailers were prohibited. What has happened to that minimum?

I am not in favor of this subdivision. I feel it is short sighted and a minimum of Ten acres per site should stand.

Sincerely,

Hugh Good